

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 305 of 2003

in

SPECIAL CIVIL APPLICATION No 10950 of 2002

with

CIVIL APPLICATION No 1884 of 2003

in

LETTERS PATENT APPEAL No 305 of 2003

Date of Decision: 5.2.2004

JAYA GHANSHYAMDAS CHELLANI

Versus

KANDLA PORT TRUST

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Appellant Mr.H.P.Motiramani, Adv.

For the Respondent Mr.S.R.Brambhatt, Adv.

For the Respondent No.2-3 Mr.R.C.Kodekar, AGP

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL)

#. This Letters Patent Appeal is directed against the order of Single Judge dated February 25, 2003 passed in Special Civil Application No.10950 of 2002

Whether reporters of Local Papers may be allowed to see the judgment?

whereby, the claim of the appellant Ms.Jaya Ghanshyamdas Chellani for her appointment in Kandla Port Trust ["KPT" for short] has been rejected.

#. The KPT issued public advertisement [Annexure-A] dated 3.8.2001 inviting applications for the post of Secondary Teacher [Science] with Gujarati Medium. The appellant applied for this post. She was called for interview [Annexure-B] on 1.2.2002 and appointed vide order dated 15.2.2002 [Annexure-C]. She has been asked to join by 1.3.2002 at 10.00 a.m.. Accordingly, the appellant resigned from the post of Teacher from Excelsion Model School, Adipur, vide resignation letter dated 19.2.2002 [Annexure-D]. She has clearly mentioned in the said letter of resignation that she has been appointed in Kandla Port Trust, therefore, she is unable to work as Assistant Teacher in the institution and therefore, her request for resignation and permission to join in KPT be granted.

#. The appellant went to join with the KPT on 19.2.2002. She could not join since she was asked to come on 25.2.2002. On that date also, she was not allowed to join and asked to come on 1.3.2002 [Annexure-E]. On 1.3.2002 she submitted joining report at 10.00 a.m.. However, her letter / correspondence to KPT indicates that she was not allowed to work. The appellant submits that she is qualified. She has been selected. She has been appointed. She has submitted joining report. Therefore, the action of the respondents is thoroughly unreasonable, arbitrary and so KPT be directed to allow to resume the duty. After serving a legal notice dated 13.9.2002, Special Civil Application No.10950 / 2002 has been filed. From various documents available on the file, it transpires that KPT sought clarification from the office of the District Education Officer ["DEO" for short] whether the appellant was qualified. This impression can be gathered from communication dated 1.10.2002 from the Secretary, KPT to DEO. Substance of the reply by DEO is that the KPT school is non aided Government recognised school, therefore, independent to deal with the matter. This stand is clearly stated in the reply filed by the State Government. With the

aforesaid background, we turn to examine the matter. First question for consideration is, whether appellant is qualified. Perusal of advertisement dated 3.8.2001 [Annexure-A] clearly stipulates that a candidate should be [a] fully trained graduate of a recognised University; [b] candidate should be B.Sc., B.Ed with science and mathematics [Gujarati Medium], [c] candidate should have atleast five years teaching experience in Government recognised school. The appellant is fully trained graduate of recognised university. She is B.Sc., B.Ed. with science and mathematics [Gujarati Medium]. She has five years teaching experience in Government recognised school since the school in which the appellant taught, is a Government recognised school. The contention that the appellant should have teaching experience with B.Ed. degree for five years and she should have taught in higher secondary school, cannot be accepted since this cannot spelt out of the requirement of qualification and experience stipulated in the advertisement. The requirement has three parameters mentioned as explained hereinabove. Therefore, we have no hesitation in coming to the conclusion that appellant is qualified. Therefore, she should have been allowed to resume the work. There is another facet of the question, KPT was sure about her qualification at the time of selection, therefore, she was selected by the Committee which included DEO from the State Government. Therefore, there was no reason for seeking clarification from the DEO / State Government whether appellant was qualified as per the qualification. The selection committee KPT has not committed any fault with regard to its decision selecting appellant. A perusal of candidates' chart prepared, on which the candidates were interviewed, also plainly and clearly shows that appellant is meritorious candidate possessing extra qualifications of NCC, Guide and Scout, drawing and Computer knowledge, which, no other candidate, atleast to that extent, possessed such qualification. Therefore, there should not have any doubt with respect to her merits and the selection committee had also no doubt as to merits and qualification of the appellant. Therefore, the appellant ought to have been permitted to resume the work. With regard to experience, it is contended that appellant may lack experience of five years. But candidates' chart clearly mentions that she has teaching experience for five years and two months and it is not necessary that it should be with B.Ed. throughout and in secondary school for 5 years. It can be from any school and duration being 5 years. Therefore, much cannot be said on this point by KPT.

#. It was submitted that appellant did not produce her relieving order from the previous employer, therefore, she could not resume the duty. Of course, this is not an essential requirement for joining the duty. This is not mandatory requirement before joining the duty, nor it was at any stage insisted. When submission was raised by the learned counsel for the KPT, with a view to understand whether there could be some difficulty on this aspect, learned counsel for the appellant was asked to file relieving certificate from the previous institution in which the appellant was serving. It is filed. The same is dated 18.7.2003, which stipulates that resignation of the appellant dated 19.2.2002 from the post of Assistant Teacher in the primary section was accepted and she was already relieved from service with effect from 19.2.2002.

#. Accordingly, we find that the appellant is qualified, she is rightly selected and appointed but not allowed to resume work though she had submitted joining report. The KPT has treated the appellant unjustly and unreasonably. The post is vacant. Learned counsel for the appellant prays that KPT be directed to pay salary for two years to the appellant. However, counsel for the respondents opposes the prayer on the ground that KPT is public body and ultimately the burden fall on public exchequer. Considering that she has been unjustly treated, not allowed to work, deprived of the post, salary and other benefits attached to it, KPT is directed to pay the appellant, salary and other allowance from 19.2.2002 to 5.2.2004.

The appeal is, therefore, allowed. Judgment of Single Judge is set aside. The KPT is directed to allow the appellant to join/ resume work and pay her the cost of Rs.1,000/= within a week.

Prayer of respondent for stay of order is rejected.

[Bhawani Singh]
Chief Justice

[H.K.Rathod]
Judge

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